

1 **SECTION 103 - AWARD AND EXECUTION OF CONTRACT**

2
3 Make the following amendments to said Section:

4
5 **(I) Amend 103.01 Consideration of Proposal** to read as follows:

6
7 **"103.01 Consideration of Proposals.** The Department will compare the
8 proposals in terms of the summation of the products of the approximate quantities
9 and the unit bid prices after the Contracts Officer opens and reads the proposals.
10 The Department will make the results immediately available to the public. If a
11 discrepancy occurs between the unit bid price and the bid price, the unit bid price
12 shall govern.

13
14 The Department reserves the right to reject proposals, waive technicalities or
15 advertise for new proposals, if the rejection, waiver, or new advertisement favors
16 the Department."

17
18 **(II) Amend 103.03 Award of Contract** to read as follows.

19
20 **"103.03 Award of Contract.** The award of contract, if it be awarded, will be
21 made within 60 calendar days after the opening of bids, to the lowest responsible
22 bidder whose proposal complies with all the requirements. The successful bidder
23 will be notified by letter mailed to the address shown on his/her proposal, that
24 his/her proposal has been accepted, and that he/she has been awarded the
25 contract.

26
27 **(1) Requirement for Award.** To be eligible for award, the
28 apparent low Bidder will be contacted to submit copies of the
29 documents listed below to demonstrate compliance with Section
30 103D-310(c), HRS. The documents should be submitted to the
31 Department as soon as possible. If a valid certificate/clearance is not
32 submitted on a timely basis for award of a contract, a Bidder
33 otherwise responsive and responsible may not receive the award.

34
35 **(A) Tax Clearance.** Pursuant to §§103D-310(c), 103-53 and 103D-328,
36 HRS, the successful bidder shall be required to submit a certified copy of its
37 tax clearance issued by the Hawaii State Department of Taxation (DOTAX)
38 and the Internal Revenue Service (IRS) to demonstrate its compliance with
39 Chapter 237, HRS. The tax clearance is valid for 6 months from the most
40 recent approval stamp date on the tax clearance. The tax clearance must
41 be valid on the bid's first legal advertisement date or any date thereafter up
42 to the bid opening date.

43
44 DOTAX Website (Forms & Information):
45 <http://www.state.hi.us/tax/alphalist.html#a>

46
47 To receive DOTAX Forms by Fax or mail, phone
48 (808)587-7572 or 1-800-222-7572.

51 The application for the clearance is the responsibility of the bidder,
52 and must be submitted directly to the DOTAX or IRS and not to the
53 Department.
54

55 **(B) DLIR Certificate of Compliance.** Pursuant to §103D-310(c), HRS,
56 the successful bidder shall be required to submit a copy (faxed copies are
57 acceptable) of its approved certificate of compliance issued by the Hawaii
58 State Department of Labor and Industrial Relations (DLIR) to demonstrate its
59 compliance with unemployment insurance (Chapter 383, HRS), workers'
60 compensation (Chapter 386, HRS), temporary disability insurance (Chapter
61 392, HRS), and prepaid health care (Chapter 393, HRS). The certificate is
62 valid for 6 months from the most recent approval stamp date on the
63 certificate. The DLIR certificate must be valid on the bid's first legal
64 advertisement date or any date thereafter up to the bid opening date. For
65 DLIR certificates which receive a "pending" approval stamp, a DLIR approval
66 stamp is required prior to the issuance of the Notice to Proceed.
67

68 The 'APPLICATION FOR CERTIFICATE OF COMPLIANCE WITH
69 SECTION 3-122-112, HAR', Form LIR#27 is available at the following
70 website: www.dlir.state.hi.us
71

72 The form is also available at the DLIR Administrative Services Office,
73 phone no. (808)586-8888 and fax no. (808)586-8899, or any of its District
74 Offices. The DLIR will return the form to the bidder who in turn shall submit
75 a copy to the Department.
76

77 The application for the certificate is the responsibility of the bidder,
78 and must be submitted directly to the DLIR and not to the Department.
79

80 **(C) DCCA Certificate of Good Standing.** Pursuant to §103D-310(c),
81 HRS, the successful bidder shall be required to submit a copy (faxed copies
82 are acceptable) of its approved Certificate of Good Standing issued by the
83 Hawaii State Department of Commerce and Consumer Affairs (DCCA),
84 Business Registration Division (BREG) to demonstrate that it is either:
85

86 (1) Incorporated or organized under the laws of the State; or
87

88 (2) Registered to do business in the State as a separate branch or
89 division that is capable of fully performing under the contract.
90

91 The DCCA certificate is valid for 6 months from the approval date on
92 the certificate. The DCCA certificate must be valid on the bid's first legal
93 advertisement date or any date thereafter up to the bid opening date. A
94 Hawaii business that is a sole proprietorship, however, is not required to
95 register with the BREG, and therefore not required to submit the certificate.
96 Bidders are advised that there are costs associated with registering and
97 obtaining a "Certificate of Good Standing" from the DCCA.
98
99
100
101
102

To obtain this certificate, go online to: www.BusinessRegistrations.com and follow the prompt instructions. To register or to obtain a certificate by phone, call (808)586-2727 (M-F 7:45 am to 4:30 pm Hawaii Standard Time).

The application for the DCCA certificate is the responsibility of the bidder, and must be submitted directly to the DCCA and not to the Department."

(III) Amend 103.06 Requirement of Contract Bond to read as follows:

"103.06 Requirement of Contract Bond. At the time of execution of the contract, the successful bidder shall file a good and sufficient performance bond and a payment bond on the forms furnished by the Department (see attached) conditioned for the full and faithful performance of the contract according to the terms and intent thereof and for the prompt payment to all others for all labor and material furnished by them to the bidder and used in the prosecution of the work provided for in the contract. The bonds, each of which shall be of an amount equal to 100% of the amount of the contract price and including 5% of the contract amount estimated to be required for extra work. The bidder shall limit the acceptable performance and payment bonds to the following:

(a) Legal tender;

(b) Surety bond underwritten by a company licensed to issue bonds in the State of Hawaii; or

(c) A certificate of deposit; share certificate; cashier's check; treasurer's check, teller's check drawn by or a certified check accepted by and payable on demand to the State by a bank savings institution or credit union insured by the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Administration (NCUA).

1. The bidder may use these instruments only to a maximum of \$100,000.

2. If the required security or bond amount totals over \$100,000 more than one instrument not exceeding \$100,000 each and issued by different financial institutions shall be acceptable.

Such bonds shall also by the terms inure to the benefit of any and all persons entitled to file claims for labor done or material furnished in the work so as to give them a right of action as contemplated by Section 103D-324, HRS."

(IV) Amend 103.07 Execution of the Contract by revising the first paragraph to read as follows:

151 **"103.07 Execution of Contract.** The contract bond and 'Chapter 104, HRS
152 Compliance Certificate, similar to a copy of the same annexed hereto, shall be
153 executed by the successful bidder and returned within ten days after the award of
154 the contract or within such further time as the Director may allow after the bidder
155 has received the contract for execution."
156

157 **(V) Amend 103.09 Submission of Insurance Certification** to read as follows:
158

159 **"103.09 Insurance Requirements.**
160

161 **(A) Obligation of Contractor.** Contractor shall obtain all required
162 insurance as part of the contract price. The Contractor shall not commence
163 any work until it obtains all required insurance. All required insurance must
164 be maintained with a company authorized by law to issue such insurance in
165 the State of Hawaii. The Contractor shall maintain all insurance until final
166 acceptance of the work by the State.
167

168 A certificate of insurance shall identify if the insurance company is a
169 "captive" insurance company or a "Non-Admitted" carrier to the State of
170 Hawaii. The Best's rating must be stated for the "Non-Admitted" carrier.
171 Certificates shall contain a provision that coverages being certified will not be
172 cancelled or materially changed without giving the Engineer at least 30 days
173 prior written notice by registered mail. If the State and its officers and
174 employees are to be Additional Insureds on any of the required insurance, it
175 shall be so noted on the certificate. Should any policy be cancelled before
176 final acceptance of the work by the State, and the Contractor fails to
177 immediately procure replacement insurance as specified, the State, in
178 addition to all other remedies it may have for such breach, reserves the right
179 to procure such insurance and deduct the cost thereof from any money due
180 to the Contractor.
181

182 Nothing contained in these insurance requirements is to be construed
183 as limiting the extent of Contractor's responsibility for payment of damages
184 resulting from its operations under this contract, including the Contractor's
185 obligation to pay liquidated damages, nor shall it affect the Contractor's
186 separate and independent duty to defend, indemnify and hold the State and
187 its officers and employees, harmless pursuant to other provisions of the
188 contract documents. The State's exercise of an option to occupy and use
189 portions of the work does not relieve the Contractor of its obligation to
190 maintain the required insurance until the date of final acceptance.
191

192 All insurance described herein shall be primary and cover the insured
193 for all work to be performed under the contract, including changes, and all
194 work performed incidental thereto or directly or indirectly connected
195 therewith, including but not limited to traffic detours, barricades, warnings,
196 diversions, lane closures and other work performed outside the work area.
197

198 Upon request, the Contractor shall furnish the Engineer, a copy of
199 required policies or other proof of coverage satisfactory to the Engineer, of
200 each type of insurance covering the work. Failure to comply with the
201 Engineer's request may result in suspension of the work, and shall be
202 sufficient grounds to withhold future payments due the Contractor and to
203 terminate the contract for the Contractor's default.
204

205 **(B) Types of Insurance.** Contractor shall purchase and maintain
206 insurance described below:
207

208 **(1)** Commercial General Comprehensive Personal Injury and
209 Property Damage Liability insurance with the following minimum limits
210 of liability:
211

212 Products - Completed/Operations Aggregate \$2,000,000
213

214 Personal and Advertising Injury \$2,000,000
215

216 Bodily Injury and Property Damage \$2,000,000 each occurrence
217

218 The State of Hawaii, its officers and employees, shall be as
219 additional insureds under these coverages.
220

221 **(2)** Automobile Liability insurance with the following minimum limits
222 of liability:
223

224 Bodily Injury Liability \$1,000,000 (Per accident)
225

226 Property Damage Liability \$1,000,000
227

228 The State of Hawaii, its officers and employees, shall be as
229 additional insureds under these coverages.
230

231 **(3)** Workers' Compensation insurance coverage for all persons
232 whom the Contractor and all its subcontractors they employ in
233 carrying out the work under this contract. This insurance shall be in
234 strict conformity with the requirements of the most current and
235 applicable State of Hawaii Worker's Compensation Insurance laws in
236 effect on the date of the execution of this contract and as modified
237 during the duration of the contract
238

239 **(C) Breach of Duty by Contractor or Insurer.** If the Contractor and/or
240 its insurer wrongfully fails to defend and/or indemnify the State of Hawaii, its
241 officers and employees, against any claims, the State may bar or suspend
242 the Contractor and/or its insurance company from bidding, working on
243 construction projects, and/or providing insurance on State construction
244 projects.

245 The State may exercise these remedies in addition to other legal or
246 equitable remedies it may have against the Contractor and/or insurer.
247

248 **(D) Subcontractor Insurance.** The Contractor shall either:
249

250 (1) Require its subcontractors to procure and to maintain during
251 the life of its subcontract, subcontractor's comprehensive general
252 liability, automobile liability and property damage liability insurance of
253 the type and in the same amounts specified herein and further require
254 that such coverage be required by its subcontractors from all lower
255 tier subcontractors;
256

257 (2) Insure the activities of its subcontractors and their lower tier
258 subcontractors in its own policy.
259

260 **(E) Self-Insured Retention.** The Contractor shall be permitted, in
261 cooperation with its insurers, to maintain a self insured retention for up to 25
262 percent of the per occurrence combined single limits of the commercial
263 general liability and the automobile liability policies required by the contract
264 documents. The existence of the self insured retention must be noted on
265 the certificate of insurance coverage submitted to the State or else it will be
266 understood that the insurer is providing first dollar coverage for all claims.
267 For all claims within the self-insured retention amount, the rights, duties and
268 obligations between the Contractor and the State shall be identical to that
269 between a liability insurer and the state, as an additional insured, as if there
270 was no self-insured retention."
271

272
273 **END OF SECTION**
274
275